

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JONATHAN OTTO,
Plaintiff,

- against -

HEARST COMMUNICATIONS, INC.

Defendant.

Docket No. 1:17-cv-4712

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Jonathan Otto (“Otto” or “Plaintiff”), by and through his undersigned counsel, as and for his Complaint against Defendant Hearst Communications, Inc. (“Hearst” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of President Donald Trump crashing a wedding at Trump National Golf Club in Bedminster, New Jersey, owned and registered by Otto, a New York City-based photojournalist. Accordingly, Otto seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is transacting business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Otto is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 31450 Washington Street, Hoboken, New Jersey 07030.

6. Upon information and belief, Hearst is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 225 Liberty Street, New York, New York 10281. Upon information and belief, Hearst is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Hearst has owned and operated a website at the URL: www.esquire.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Otto photographed Donald Trump crashing a wedding in Trump National Golf Club in Bedminster, New Jersey (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Otto is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph has a pending application with the United States Copyright Office and was given pending number 1-5377479441. See Exhibit B.

10. The fee has been paid the work has been deposited with the Copyright Office.

B. Defendant's Infringing Activities

11. Upon information and belief, on or about June 11, 2017, Hearst ran an article on the Website entitled *President Trump is the Ultimate Wedding Crasher*. See <http://www.esquire.com/news-politics/news/a55573/president-trump-wedding-crasher/>. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto in Exhibit C.

12. The Photograph appears on Hearst's servers.

13. Hearst did not license the Photograph from Plaintiff for its article, nor did Hearst have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST HEARST)
(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

15. Hearst infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Hearst is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by Hearst have been willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

18. As a direct and proximate cause of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover his damages and defendant's profits pursuant to 17 U.S.C. § 504(b).

19. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

20. Plaintiff further is entitled to recover his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Hearst be adjudged to have infringed upon Plaintiff's copyright in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorney's fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
June 21, 2017

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